

REMARKS

Applicants timely submit this response to the Examiner's Final Office Action of September 7, 2005. The Final Office Action has been carefully reviewed and the following remarks are made in response thereto.

1. Status of Application

The present application includes pending claims 27-39 and 46-53.

- Claims 27-39 and 46-53 are pending in the present application. Claims 46 and 49-52 were previously withdrawn from consideration. Claims 27-39 and 46-53 have been canceled and claims 54-69 have been added by the present amendment.
- Claims 27-31, 34 and 38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-7 of U.S. Patent No. 6,071,526 to Schmidt *et al.*
- Claims 27-39 and 53 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,945,109 to Schmidt *et al.*
- Claims 27 and 28 are rejected under 35 U.S.C. §102(b) as being anticipated by Fritz *et al.* (Endocrine (1998) 139(8):3399).
- Claims 27 and 28 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,770,609 to Grainger *et al.*
- Claims 27 and 28 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,254,594 to Nikura *et al.*
- Claims 27 and 28 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,972,921 to Sannti *et al.*
- Claims 27, 28, 37-39, 47 and 48 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,455,517 to Tanabe *et al.*
- Claims 27, 28, 37-39, 47 and 48 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,455,517 to Tanabe *et al.*

Please cancel the claims 27-39 and 46-53, and add claims 54-69 as indicated above. The following issues are outstanding in the present application:

2. Discussion

I. The Rejection of Claims 27-31, 34 and 38 Under The Doctrine Of Obviousness-Type Double Patenting

The examiner rejected claims 27-31, 34 and 38 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-7 of U.S. Patent No. 6,071,526 ('526 patent) to Schmidt *et al.* Applicants have canceled claims 27-31, 34 and 38. New claims 54-69 have been added. The scope of new claims 54-69 is believed to be distinct from the method of claims 2-7 of the applicants' earlier '526 patent. In light of these claim amendments, applicants respectfully traverse these rejections.

II. The Rejection of Claims 27-39 and 53 Under 35 U.S.C. §102(e)

The examiner rejected claims 27-39 and 53 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,945,109 ('109 patent) to Schmidt *et al.*

The '109 patent is not available as prior art under 35 U.S.C. §102(e). In order for a reference to qualify as prior art under section 102(e)(2), the reference must be "a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent," (emphasis added). Here, the '109 patent has the same inventive entity (Alfred Schmidt and Heinrich Wieland) as the present application – it is not "by another." Therefore, the '109 patent is not available as prior art under 35 U.S.C. §102(e).

Assuming *arguendo* that the '109 patent is available as prior art, applicants have canceled claims 27-31, 34 and 38. New claims 54-69 have been added. The scope of new claims 54-69 is believed to be distinct from the disclosure of the applicants' earlier '109 patent. In light of these claim amendments, applicants respectfully traverse these rejections.

III. The Rejection of Claims 27 and 28 Under 35 U.S.C. §§102(b) and (e)

The examiner rejected claims 27 and 28 under: (1) 35 U.S.C. §102(b) as being anticipated by Fritz *et al.* ("Fritz") (Endocrine (1998) 139(8):3399); (2) 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,254,594 to Nikura *et al.* ("Nikura"); (3) 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,770,609 to Grainger *et al.* ("Grainger"); and (4) 35 U.S.C. §102(e) as

being anticipated by U.S. Patent No. 5,972,921 to Sannti et al. ("Sannti"). Applicants have canceled claims 27 and 28. New claims 54-69 have been added. The scope of new claims 54-69 is believed to be distinct from the disclosure of the Fritz, Nikura, Grainger and Sannti references. Specifically, none of these references discloses a cosmetic treatment method for stabilizing, increasing or restoring collagen, comprising *inter alia* administering a composition comprising an aromatase inhibitor. In light of these claim amendments, applicants respectfully traverse these rejections.

IV. The Rejection of Claims 27, 28, 37-39, 47 and 48 Under 35 U.S.C. §§102(e) and 103(a)

The examiner rejected claims 27, 28, 37-39, 47 and 48 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,455,517 to Tanabe *et al.* ("Tanabe"), and under 35 U.S.C. §103(a) as being unpatentable over Tanabe. Applicants have canceled claims 27, 28, 37-39, 47 and 48. New claims 54-69 have been added. The scope of new claims 54-69 is believed to be distinct from the disclosure of the Tanabe reference. Specifically, Tanabe does not disclose or teach, *inter alia*, administering a composition comprising an aromatase inhibitor. In light of these claim amendments, applicants respectfully traverse these rejections.

3. Conclusion.

Applicants believe that this application is now in condition for allowance. Reconsideration and withdrawal of the outstanding rejections and early notice of allowance to that effect is respectfully requested. Should the Examiner have any questions, comments or suggestions in furtherance on the prosecution of this application, he is invited to contact the applicants' representative by telephone at the number indicated below. If there are any other fees due in connection with the filing of this response, please charge the fees as follows:

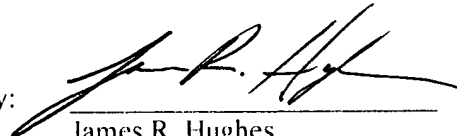
EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Director is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 13-3250, reference No. 38891.00000. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F. R. § 1.136(a)(3).

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY LLP

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